

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Richardson	Team: Squad #15	CCRB Case #: 201510512	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/09/2015 7:45 PM	Location of Incident: East 169th Street between Boston Road and Franklin Avenue	Precinct: 42	18 Mo. SOL 6/9/2017	EO SOL 6/9/2017	
Date/Time CV Reported Fri, 12/11/2015 2:28 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 12/11/2015 2:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Pacheco	11444	956145	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Scarlet Delvecchio	12314	956029	042 PCT
2. LT Sharisse Sanders	00000	931137	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Carlos Pacheco	Abuse: PO Carlos Pacheco issued § 87(2)(b) a summons.	
B.POM Carlos Pacheco	Discourtesy: PO Carlos Pacheco spoke discourteously to § 87(2)(b)	
C.POM Carlos Pacheco	Abuse: PO Carlos Pacheco threatened § 87(2)(b) with the use of force.	
D.POM Carlos Pacheco	Abuse: PO Carlos Pacheco threatened § 87(2)(b) with the use of force.	

Case Summary

On December 9, 2015, at approximately 7:45 p.m., PO Carlos Pacheco of the 42nd Precinct issued § 87(2)(b) a summons for an open container of alcohol. However, § 87(2)(b) was not present when PO Pacheco issued him the summons. PO Pacheco left the aforementioned summons underneath a “Red Bull” can on top of a pillar to the side of § 87(2)(b), in the Bronx (**Allegation A**). § 87(2)(b) came downstairs from the building and saw the summons. Shortly thereafter, § 87(2)(b) saw PO Pacheco and his partner, PO Scarlet Delvecchio on the corner of East 169th Street and Franklin Avenue. § 87(2)(b) began to record a video on his cell phone, while he approached the police officers with his friend § 87(2)(b). § 87(2)(b) asked PO Pacheco about the summons, and to speak to PO Pacheco’s sergeant or lieutenant to which PO Pacheco responded “Get the fuck out of my face and go find him yourself” (**Allegation B**). § 87(2)(b) and § 87(2)(b) state that PO Pacheco threatened § 87(2)(b) with force in that PO Pacheco told § 87(2)(b) “I’ll smack your other eye out” (**Allegation C**). § 87(2)(b) states that PO Pacheco threatened § 87(2)(b) with force in that he told § 87(2)(b) “I’ll slap you.” (**Allegation D**). § 87(2)(b) and § 87(2)(b) then walked away from PO Pacheco and PO Delvecchio.

This case has video evidence. A SnagIt copy of which has been placed below. Please note that the full video can be seen in Board Review 10 and the video transcription can be found in Board Review 11.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- On December 30, 2015, § 87(2)(b) rejected mediation as an alternative to resolve this complaint § 87(2)(b)
- Confirmation that there was no Notice of Claim filed in regards to this incident from the Office of the New York City Comptroller was received on January 8, 2016 (See Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
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§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) and the first involving § 87(2)(b) (See Board Review 03).
- PO Pacheco has been a member of service for 2 years and has had 3 CRRB allegations, none of which have been substantiated § 87(2)(g)

Findings and Recommendations

Allegation A: Abuse of Authority: PO Carlos Pacheco issued § 87(2)(b) a summons.

It is undisputed that PO Pacheco issued § 87(2)(b) a summons for open container. § 87(2)(g)

§ 87(2)(b) was standing in front of a pawn shop to the side of § 87(2)(b), an apartment building, conversing with an unidentified older lady and § 87(2)(b) when he observed PO Pacheco and PO Delvecchio walk pass him without either party saying anything to each other. § 87(2)(b) was not drinking any alcoholic beverages at this time nor was anyone around him. There were no bottles in his vicinity. A short while after this, he went into the aforementioned building, to his grandmother's house. Approximately 25-30 minutes later § 87(2)(b) called him and told him that he had a summons with his name on it that was left underneath a can, which was issued by the police officers they saw earlier. § 87(2)(b) went downstairs and § 87(2)(b) handed him the summons (Board Review 06).

§ 87(2)(b) corroborated § 87(2)(b)'s testimony with the following differences: § 87(2)(b) states that he was drinking alcohol, Hennessey, out of a clear plastic cup during the time in question. § 87(2)(b) was with approximately 5-6 male individuals, and some of them were drinking but noted that he did not recall if § 87(2)(b) was present during this time, nor if § 87(2)(b) was drinking any alcohol. § 87(2)(b) observed PO Pacheco pull out his summons pad, write on it, and then place the summons underneath a "Red Bull" can on the front stoop of the aforementioned building (Board Review 07).

PO Pacheco testified he observed § 87(2)(b) with approximately four male individuals standing in front of the aforementioned location, and observed § 87(2)(b) with a clear plastic cup containing clear liquid, which he believed to be alcohol. PO Pacheco observed § 87(2)(b) pour Red Bull into the aforementioned cup and then put it on a pillar to the side of the aforementioned location. PO Pacheco observed § 87(2)(b) clearly from directly across the street which was an approximate twenty feet distance. PO Pacheco believed the aforementioned liquid to be alcohol because § 87(2)(b) "is known" to drink at the location, by several other patrol officers in the same command who have previously issued § 87(2)(b) summonses for an open container of alcohol. Secondly, he believed the substance to be alcohol because § 87(2)(b) poured Red Bull in the cup and put it in a location § 87(2)(b) "is known" to hide his drinks. PO Pacheco stated that § 87(2)(b) was the only person drinking. PO Pacheco did not recall whether he was across the street or in front of the incident location when he started to write the summons. PO Pacheco was not able to ask § 87(2)(b) for identification because § 87(2)(b) went inside an apartment building with a locked front door. PO Pacheco was able to fill out parts of the pedigree information on the summons because of previous interactions he has had with § 87(2)(b). PO Pacheco was not able to inquire about the liquid in the cup or any information pertinent to the issuance of the summons because § 87(2)(b) had already left. PO Pacheco did not give § 87(2)(b) the summons and noted that he left the summons underneath a Red Bull can on a pillar to the side of the aforementioned location. PO Pacheco did not recall seeing any alcohol or bottles around this area at this time, but noted he smelled alcohol in the area. (Board Review 08)

PO Delvecchio corroborated PO Pacheco with the following differences: she observed § 87(2)(b) pour a clear liquid into a clear plastic from a bottle inside a black plastic bag; however she could not describe the bottle or any labels on the bottle. PO Delvecchio stated PO Pacheco picked up the aforementioned bottle and smelled it and then wrote § 87(2)(b) the summons. PO Pacheco used a “list” given to each officer in the command that catalog the photographs’, names’, and date of births’ of recidivists in the neighborhoods that the officers patrol. (Board Review 09)

When issuing a summons returnable to the Traffic Violations Bureau or Criminal Court a Uniformed Member of service must inform the violator of the offense committed, and request that violator show proof of identity and residence. *Patrol Guide Procedure 209-09*. (Board Review 04)

§ 87(2)(g)

[REDACTED]

Allegation B- Discourtesy: PO Carlos Pacheco spoke discourteously to § 87(2)(b)

It is undisputed, as per the video footage that PO Pacheco spoke discourteously to § 87(2)(b) in that, he stated “Get the fuck out of my face and go find him yourself. How about that”?



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PO Pacheco did not recall what his response was when § 87(2)(b) asked to speak to his sergeant or lieutenant but he did note that he “probably did” curse at § 87(2)(b) during the incident. PO Pacheco did not recall exactly what curse he said but stated that it was pertaining to § 87(2)(b) moving away from him, and noted that it could have been “Get the fuck out of here. You think you gonna come push me” When PO Pacheco was shown the video and asked if he is the male officer in the video PO Pacheco admitted that it was him. PO Pacheco stated that when he said “Push me” he wasn’t referring to any physical contact made but testified that he was referring to the fact that he was not going to be pushed around figuratively by § 87(2)(b) PO Pacheco stated that he is not able to tell if it was his voice who stated “Fuck outta here.”

PO Delvecchio's stated that she "believes" § 87(2)(b) asked PO Pacheco to speak to the sergeant or lieutenant but stated she did not recall what PO Pacheco responded. At first, she did not recall if PO Pacheco cursed at § 87(2)(b) but upon seeing the video footage, PO Delvecchio stated that it was PO Pacheco who stated "Get the fuck out of my face and go find him yourself." PO Delvecchio also stated that the first "Fuck outta here" stated in the video recording sounded like it was PO Pacheco's voice.

An officer must be courteous and respectful. *Patrol Guide Procedure 203-09* (Board Review 12)

§ 87(2)(g)

Allegation C- Abuse of Authority: PO Carlos Pacheco threatened § 87(2)(b) with the use of force

It is undisputed that § 87(2)(g) PO Pacheco stated to § 87(2)(b) "I'll smack your other eye out." § 87(2)(g)

§ 87(2)(b) stated he heard PO Pacheco threaten § 87(2)(b) by stating to § 87(2)(b) "I'll smack you. I'll smack your other eye out". § 87(2)(b) stated he knew PO Pacheco was talking to § 87(2)(b) because PO Pacheco was looking directly at § 87(2)(b) and because § 87(2)(b) has only one eye. § 87(2)(b) corroborated § 87(2)(b)'s statement in that, § 87(2)(b) heard PO Pacheco state to him "I'll slap your other eye out."

PO Pacheco stated that he did threaten § 87(2)(b) with the use of force and stated that he told § 87(2)(b) "I'll hit the other eye out of your head". PO Pacheco stated that this statement was stated in a joking, comical manner, and was not meant to be taken seriously. PO Delvecchio stated she did not recall if PO Pacheco threatened § 87(2)(b) with the use of force, and upon being shown the video stated that she heard the statement "I'll smack your other eye out" but was unable to identify the voice behind the statement because the civilians and PO Pacheco were talking back and forth.

An officer may make a threat of force, if not egregious, only when it performs a legitimate police function, particularly if it used in lieu of further escalation of violence. *NYPD v. Briscoe OATH No. 1328/00* (Board review 05)

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

Allegation D- Abuse of Authority: PO Carlos Pacheco threatened § 87(2)(b) with the use of force

§ 87(2)(g)

[REDACTED]

§ 87(2)(b) alleged that while § 87(2)(b) and PO Pacheco were talking PO Pacheco moved closer to § 87(2)(b) while stating, “Get out of my face. I’ll slap you.”

§ 87(2)(b) instead, alleged that PO Pacheco threatened only § 87(2)(b) with the use of force, in that PO Pacheco stated to § 87(2)(b) “I’ll smack you. I’ll smack your other eye out.” § 87(2)(b) stated he was sure that PO Pacheco was talking to § 87(2)(b) because PO Pacheco was looking directly at § 87(2)(b) while uttering the statement and because § 87(2)(b) has only one eye.

PO Pacheco admitted to threatening § 87(2)(b) with the use of force but he denied threatening § 87(2)(b) with the use of force. During PO Delvecchio’s interview she stated that she did not recall if PO Pacheco threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

[REDACTED]

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date